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In the Supreme Court of the United States

October Term, 1975

Docket Number 75-175

JOHN IKE GRIFFITH
Petitioner-Appellant

Vs.

UNITED STATES OF AMERICA
Respondent-Appellee

PETITION FOR REHEARING OF PETITION FOR WRIT OF CERTIORARI TO THE FIFTH CIRCUIT COURT OF APPEALS

JOHN IKE GRIFFITH, pro se
Address:
Box 147, Route 1
Dutton, Alabama 35744

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JURISDICTION

Indictment charged violation of 18 U. S. C. 371 and 18 U. S. C. 1341

Motion to vacate judgment and sentence: 28 USC 2255

Denial of Due Process of Law. Fifth Amendment to U.S. Constitution.

This Honorable Court on November 4, 1975, denied your Petitioner's Petition for Writ of Certiorari to the Fifth Circuit Court of Appeals in case no. 74-4012—John Ike Griffith, Petitioner-Appellant vs. United States of America, Respondent-Appellee.

This Petition for Rehearing of the Petition for Certiorari to the Fifth Circuit Court of Appeals is herewith filed.

That this Petition for Rehearing is brought in good faith for that the Petitioner believes it contains great merit. It is not brought for the purpose of delay.

Your Petitioner adopts by reference his original Petition for Writ of Certiorari, with the appendix thereto in separate booklet in case no. 75-175 to the Fifth Circuit Court of Appeals—and requests that the same be reconsidered along with and in connection with this Petition for Rehearing—for that they are so related to each other—and compliment each other to aid the Court in full understanding of the issues

presented for rehearing.

In the report of the Magistrate to the U.S. District Court he stated that the Motions filed along with the Section 2255, Title 28, Motion seeking abatement of sentence, and seeking oral evidentiary hearing on the substance and content of the motions should be denied for that the motions failed to carry the "form statement" that the motions were not filed for the purpose of delay.

Now, the Supreme Court's attention is called to the fact that Petitioner had already served the custodal part of his sentence—and there was no purpose for any further delay. But, that here in the Section 2255 Motion under Title 28, and the supporting motions requesting oral evidentiary hearings on the same were filed for the purpose of speed—not delay to have the court remove the sentence and burden against the Petitioner to clear his good character—good name—and restore him to all privileges of full citizenship by removing the sentence imposed against him. And, within the Section 2255 Motion, Title 28, there was included therein that the same was not filed for delay. And, the supporting motion for oral hearing also referred to this same 2255 Motion, Title 28, which I believe corrected any error of oversight in stating that the Motions were not filed for the purpose of delay.

Your Petitioner verily believes that the Supreme Court should always consider the great merit of the motions—and overlook or excuse the wording form—and set the motions down for oral evidentiary hearings—thus giving the Petitioner opportunity to subpoena witnesses before the Court to prove the allegations contained in the motions—thus affording

full due process of law to the Petitioner.

But, instead of setting the said motions down for oral evidentiary hearings the Court denied the Section 2255, Title 28, Motion along with the supporting motions filed at the time without any hearings at all—thus in effect nailing up the doors of the court room to your Petitioner—and in effect denying to the Petitioner DUE PROCESS OF LAW.

Your Petitioner now comes before this Honorable Supreme Court of the United States with this Petition for Rehearing of his Petition for Writ of Certiorari to the Fifth Circuit Court of Appeals—and respectfully requests the Court to grant to the Petitioner a Rehearing on his Petition for Certiorari to the Fifth Circuit Court of Appeals directing that the full record be sent up to the Supreme Court for review—where the Supreme Court may read the full texts of the motions filed—and denied by the U. S. District Court without an oral evidentiary hearing to determine that the said motions filed have in fact great merit—and were not under the circumstances filed for the purpose of delay. But, that they were in fact filed for speed—not delay—to correct a great injustice imposed on the Petitioner.

The Motions for oral evidentiary hearing on Petitioner's Section 2255 Title 28 Motion in the U. S. District Court would have given the Petitioner opportunity to subpoena the postal inspector, Mr. Charles E. Davis, and his assistants and others to adduce evidence concerning his "illegal bugging," and or unlawful surveillance of Petitioner's mail—as well as other witnesses to prove other facts supporting the other six grounds of error set forth in Petitioner's Section 2255 Title 28 Motion such as

inadequate legal representation; facts concerning membership of U. S. District Judge Clarence W. Allgood in the Alabama and Birmingham Bar Associations to disqualify him from sitting as judge in this bar association sponsored prosecution; the established laws of the State of Alabama on the subject of divorce; the bias of the U. S. District Judge; the adverse publicity in the press making it impossible for the defendant Petitioner to obtain a fair trial; the condoning of great numbers of other Alabama attorneys in their aid in obtaining divorces under the provisions of the Alabama laws—like and similarly situated to your Petitioner; the numerous acts and conduct by the U. S. District Attorney's office in creating and establishing pre-indictment delay; the compromised and intimidating circumstances of certain witnesses appearing against Petitioner in that they were under indictment or fear of indictment; the variance of the sentences on punishment of the co-defendants in this case—showing bias and prejudice against this defendant-Petitioner and the illegal methods used in adducing and presenting evidence against Petitioner—including illegal search and seizure.

Thus Petitioner respectfully submits that it was harmful, hurtful, and prejudicial error for the U. S. Trial Judge to dismiss the said motions without granting oral evidentiary hearing on the same. Petitioner prays that this Honorable Supreme Court will grant this Petition for Rehearing on his Petition for Writ of Certiorari to the Fifth Circuit Court of Appeals to review all lower court rulings on the

Section 2255 Title 28 Motion—and the supporting motions as aforesaid.

Respectfully submitted,
John Ike Griffith, Per se.

APPENDIX: Copies of three of the motions referred to are set out in the Appendix of the PETITION FOR WRIT OF CERTIORARI TO THE FIFTH CIRCUIT COURT OF APPEALS. And, we have adopted the same by reference as though fully set forth herein. We hope the Court will take time to read them.

(STATE OF ALABAMA, JACKSON COUNTY)

John Ike Griffith, being first duly sworn, under oath, presents that he has subscribed to the above, and does state that the information, facts, and allegations hereinabove stated are true and correct to the best of his knowledge and belief. The foregoing Petition for Rehearing is not made for the purpose of delay.

John Ike Griffith

Subscribed to and sworn to before me this ..... day of ....., 1975.

SEAL Notary Public

For the reasons above stated, it is respectfully submitted that the Petition for Rehearing of the Petition for Writ of Certiorari in this case should be granted.

John Ike Griffith, Per se.

CERTIFICATE OF SERVICE

I certify that I have this the ..... day of ....., 1975, served three copies of the foregoing PETITION FOR REHEARING of my PETITION FOR WRIT OF CERTIORARI on the Solicitor General of the United States, Department of Justice, Washington, D.C., by depositing the same in the U. S. Mails, properly addressed to him, with postage prepaid.

John Ike Griffith.

SUMMARY ARGUMENT, AND CASE CITATIONS
SECTION 14, FEDERAL HABEAS CORPUS,
SOKOL, SECOND ED., p. 111

"Where the facts are in dispute, the Federal Court in Habeas Corpus must hold an evidentiary hearing"

TOWNSEND vs. SAIN 372 US 293, 318 (1963)

"THE PETITIONER'S AFFIDAVITS LEAVE A DISPUTE Exhibit A."

SECTION 14, CONDUCTING THE HEARING (Sokol Habeas Corpus) page 116 "DECIDING TO HOLD A HEARING DOES NOT END THE MATTER. IT MUST BE CONDUCTED WITH A CERTAIN DEGREE OF CRAFTSMANSHIP. AND OF COURSE IT IS THE RESPONSIBILITY OF THE COURT TO MAKE CERTAIN THAT THIS IS DONE."

FEDERAL HABEAS CORPUS—A SECOND REVISED EDITION OF A HAND BOOK OF DEFERRAL HABEAS CORPUS by Ronald Sokol

At page 187—25

SANDERS vs. UNITED STATES . . . . . , 373 U. S. 1, 15 (1963)

The Court of Appeals for the Third Circuit in United States vs. Morin, 265 F. 2nd 241, 245 (1969), and made the following statement appropriate to the issued herein:

"IT APPEARS EQUALLY WELL SETTLED THAT WHERE A PRISONER ON A MOTION UNDER Section 2255, Title 28 alleges facts which, if true, WOULD CONSTITUTE A DENIAL OR INFRINGEMENT OF CONSTITUTIONAL RIGHTS SO AS TO RENDER THE JUDGMENT VULNERABLE TO COLLATERAL ATTACK, IT IS INCUMBENT UPON THE DISTRICT COURT TO ORDER THE PRODUCTION OF THE PRISONER AND HAVE A HEARING OF THE CONTESTED OR CONTROVERTED QUESTION OF FACT."

The matter seems to have been well settled by the United States Supreme Court in United States vs. Hayman, supra, the Court said with respect to this problem: "THE ISSUES RAISED BY RESPONDENT MOTION WERE NOT DETERMINED BY THE 'FILES AND RECORDS' IN THE TRIAL COURT. IN SUCH CIRCUMSTANCES, SECTION 2255, Title 28 REQUIRES THAT THE TRIAL COURT ACT ON THE MOTION AS FOLLOWS...CAUSE NOTICE THEREOF BE SERVED UPON THE UNITED STATES ATTORNEY, GRANT A PROMPT HEARING." "THEREUPON, DETERMINE THE ISSUES AND MAKE FINDINGS ON THE FACT AND CONCLUSION OF LAW WITH RESPECT THERETO. IN REQUIRING A HEARING THE SECTION HAS OBVIOUS REFERENCE TO THE

TRADITION OF THE JUDICIAL PROCEEDINGS. THE RESPONDENT, DENIED AN OPPORTUNITY TO BE HEARD, HAS LOST SOMETHING INDISPENSIBLE—HOWEVER, THE EX-PARTE SHOWING. WE CONCLUDE THAT THE DISTRICT COURT DID NOT PROCEED IN CONFIRMITY WITH SECTION 2255 WHEN IT MADE THE FINDINGS ON CONTROVERTED ISSUES OF FACT RELATING TO RESPONDENT'S OWN KNOWLEDGE WITHOUT HIS BEING PRESENT."

Wherefore, we conclude that the trial court committed reversable error in denying your Petitioner on oral evidentiary hearing on the motions. We pray for a Rehearing on the Petition for Writ of Certiorari to the Fifth Circuit Court of Appeals.

John Ike Griffith, Per se.